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In the Supreme Court of the United States.

GOAT & SHEEPSKIN IMPORT CO.,
Petitioner,

against

THE UNITED STATES,
Respondent.

Suit No. 3641.

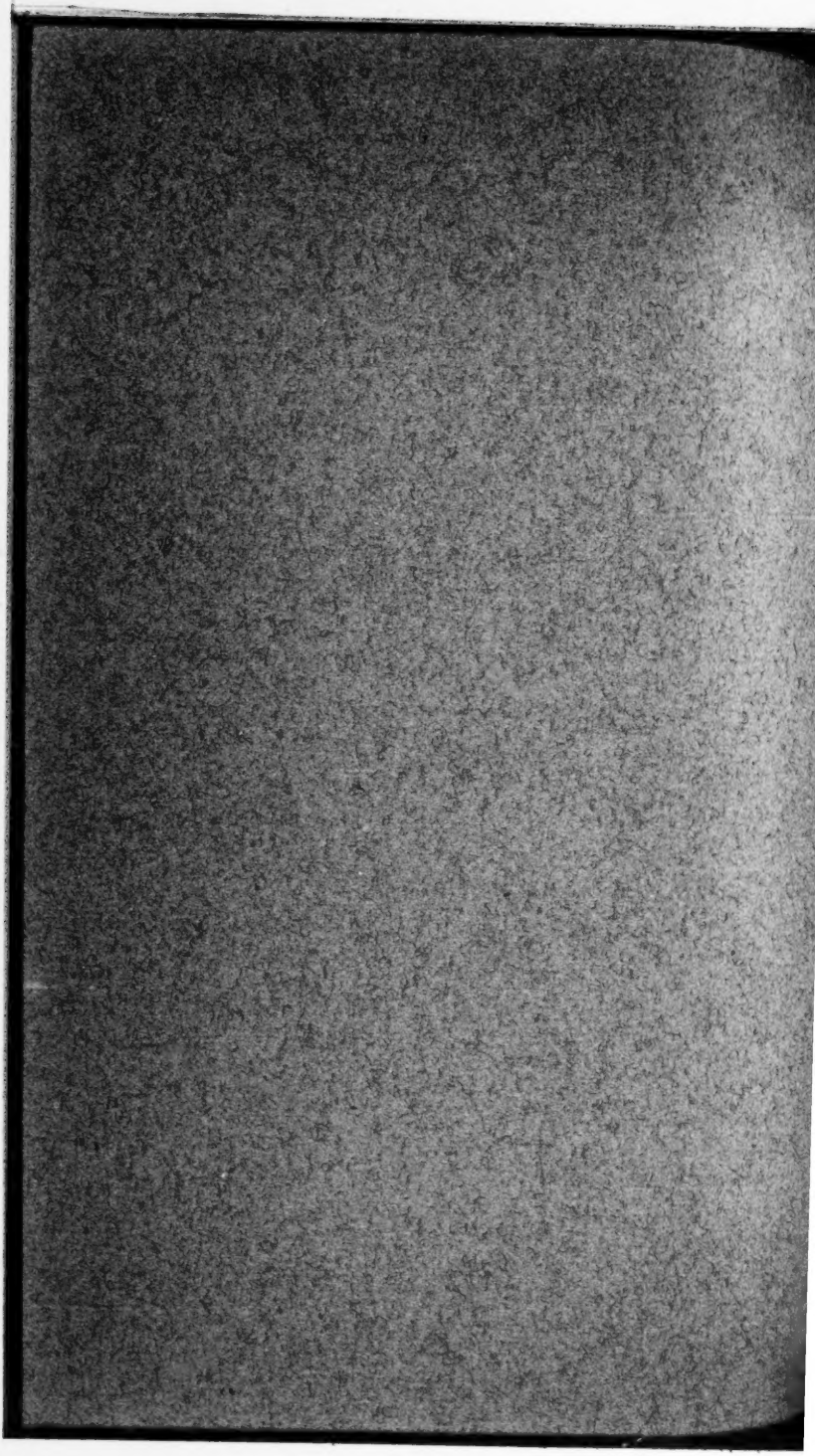
PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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IN THE

Supreme Court of the United States.

GOAT & SHEEPSKIN IMPORT COMPANY, Petitioner, against THE UNITED STATES, Respondent.	Suit No. 3641.

Petition for Writ of Certiorari to the Circuit Court of Appeals, for the Second Circuit, and Brief in Support Thereof.

The Goat & Sheepskin Import Co., through its counsel, Edward S. Hatch and J. Stuart Tompkins, respectfully prays that a writ of certiorari be allowed herein, to bring the case before this Court for a review of the decree of the United States Circuit Court of Appeals for the Second Circuit, affirming the decision of the Circuit Court without opinion, and adjudging that an article commercially known as mocha hair, used for stuffing purposes (and never as wool) was properly assessed for duty at a rate equivalent to more than one hundred per cent. *ad valorem*, as "wools of the third class."

The Importance of the Issue.

This application is one of the utmost importance to the shoe manufacturers of this country who consume large quantities of the mocha skins which are the subject of this suit It is a matter of public knowledge that the present Tariff Act, with its duty on hides, imposes a heavy burden on those manufacturers. The judgment in the present case rests upon a change in practice of the government wool examiner, at New York His testimony furnishes a mere shred of evidence to sustain his change in practice and alone supports the present judgment, as against the testimony of nine witnesses to the contrary, called from various trades. We confidently expect that this Court will review the proceedings in this case, which, if allowed to stand, will aggrevate the burden of a class of domestic manufacturers, who are already demanding tariff revision to relieve them from the present duty on hides, and who suffer further, in the present case, by the imposition of duty on the dead hair or hemp on the skins, which the examiner, after ten years of practice to the contrary, decided to be wool.

Brief in Support of the Petition.

The merchandise consists of mocha white sheepskins from Hodeida, Arabia, with a commercially worthless hair or substance thereon, in that it costs more to remove the hair from the pelts than the hair eventually sells for (fols. 185, 110). This hair was returned for duty at three cents per pound under the provisions of Paragraphs 351, 358 and 360 of the Tariff Act of July 24, 1897, as "wools of the third class," on the skin.

The paragraphs above named read as follows:

"351. Class three, that is to say, Donskoi, "native South American, Cordova, Val- "paraiso, native Smyrna, Russian Camels' "hair, and all such wools of like character as "have been heretofore usually imported into "the United States from Turkey. Greece, "Syria and elsewhere, excepting improved "wools hereinafter provided for."

"358. On wools of the third class and on "camels' hair of the third class the value "whereof shall be twelve cents or less per "pound, the duty shall be four cents per "pound."

"360. The duty on wools on the skin shall "be one cent less per pound than is imposed "in this schedule on other wools of the same "class and condition, the quantity and value "to be ascertained under such rules as the "Secretary of the Treasury may prescribe."

The merchandise was claimed in the protest to be entitled to free entry under Paragraph 664 of the Free List, reading as follows:

"664. Skins of all kinds, raw (except sheep- "skins with the wool on), and hides not "specially provided for in this Act;"

and in some of the protests, the substance on the skins, if any, was claimed to be free of duty under Paragraph 571 of the Free List, which reads as follows:

"571. Hair of horse, cattle, and other ani- "mals, cleaned or uncleaned, drawn or un- "drawn, but unmanufactured, not specially "provided for in this Act; and human hair, "raw, uncleaned, and not drawn."

The Board of General Appraisers and the Circuit

Court held, as we contend contrary to all the evidence in the case and in total disregard of the doctrine of commercial designation as laid down by this Court, that the substance on the skins should be assessed for duty as wool of the third class, and overruled the protests.

(*Decisions, fols. 149-152, 208-211.*)

The Circuit Court of Appeals for the Second Circuit, after giving the matter exceptionally brief consideration, affirmed the decision of the Circuit Court without opinion.

I.

The evidence in this case is uniform, convincing and uncontroverted that the substance on these mocha whitehead sheepskins, according to the general commercial or trade understanding, as well as according to common understanding, is not wool, but, on the contrary, is hair, and it follows that the Collector's classification of the substance as wool of Class 3 was erroneous.

(A)

It is difficult (not to say impossible) to understand how any person, after carefully reading the testimony in this case, and thereafter examining the official sample in the light of that evidence, could arrive at the conclusion that the growth on these skins is wool in a trade sense or any other sense, or that it is anything more or less than mocha hair.

The Government failed to call a single witness to substantiate its claim. On the other hand the importers called six witnesses before the Board, and three additional witnesses in the Circuit Court, some of them well known and generally recognized as men of high standing and probity, and their combined evidence is wholly convincing that the substance or growth on these skins would not be and never has been recognized in the trade as wool, that on the contrary it has always been generally and uniformly bought and sold only under the name of "mocha hair," and is so known and recognized not only in commerce, but also according to common understanding; that it is used for purposes other than those to which wool is applied—and that this mocha hair would not be accepted as a good delivery under an order for even low grade wool.

Upon this point, Mr. Ritchie, an entirely disinterested witness, testified in the Circuit Court as follows:

"Q. Would not this growth on Exhibit I "be a good delivery on an order for low grade "wool?

"A. No, sir.

"Q. Why?

"A. Because it is not commercially known "as wool by the people that use it; you can't "go around and sell that to these woolen "manufacturers and tell them it is wool; "they will give you the laugh (fol. 199).

* * * * * *

"Q. You say there is no wool at all on that "skin, Exhibit I?

"A. Not as I would know it commercially, "as being a hair dealer and low grade wool "dealer.

"Q. There are different kinds and classes "and grades of wool, are there not?

"A. Hundreds of classes and grades. But "I wouldn't have the nerve to offer that (re- "ferring to growth on Exhibit I) to any man "as wool" (fol. 202).

The above quoted testimony of Mr. Ritchie is abundantly corroborated, the foregoing being given simply as a sample of the character of the evidence which appears all through this record from beginning to end.

See the testimony of

Mr. Souls, fols. 86-89.
Mr. Klauder, fols. 97-98. 101, 104.
Mr. Parkhurst, fols. 113-115, 117-119.
Mr. Simon, fols. 126-127.
Mr. Weiler, fols. 191-192,

as well as the testimony of

Mr. Ritchie, fols. 199-202,

all of which was admitted *without any objection being raised on the part of Government Counsel,* and all of which, it is submitted, strongly tends to prove that the covering on these low grade sheepskins *on and prior to July 24, 1897, would never have been considered, accepted, or sold as wool,* but that, on the contrary, it was on and prior to July 24, 1897, uniformly regarded, bought and sold at wholesale in the United States as hair.

This general and uniform commercial understanding and usage, excluding this article from the category of merchandise regarded in trade as "wool," and including it in the category of merchandise known as "hair," should be taken into consideration and be given weight in determining whether or not this merchandise was properly

classified by the Collector under Paragraph 358 of the Tariff Law of 1897, as "wool."

Arthur vs. Morrison, 96 U. S., 108, 110.
Von Stade vs. Arthur, 13 Blatch. (U. S.), 251.
Elliott vs. Swartwout, 10 Peters, 137, 151.
United States vs. Reiss & Brady (C. C. A.), 136 Fed. Rep., 741.
Robertson vs. Salomon, 130 U. S., 412, 415.
Hedden vs. Richard, 149 U. S., 346.

In *Von Stade vs. Arthur, 13 Blatchf. (U. S.), 251*, it was held that in the Tariff Acts the article "*bristles*" was separately classified and regarded as a different article from hair, and "bristles" were held not to be included in the general words "the hair of an animal."

On similar reasoning, in the case at bar, it may be held that "mocha hair," in commercial parlance and under trade understanding, is an article separate and distinct from "wool."

Elliott vs. Swartwout, 10 Peters, 96, tends to support our contention that the distinct article known in commerce under the denomination of "mocha hair" (and never as "wool") should not be classified as wool, especially as there is an enumeration in the free list sufficiently comprehensive to include it.

In *Elliott vs. Swartwout, 10 Peters, 137, 151*, the question for determination was whether certain "worsted shawls with cotton borders, and worsted suspenders with cotton straps or ends," "were or were not a manufacture of wool, or of which wool was a component part, within the meaning of the

words 'all other manufactures of wool, or of which wool is a component part,' in the second article of the second section of the Act of Congress of the 14th of July, in the year 1832."

Mr. Justice THOMPSON, who delivered the opinion of the Court, said:

> "It is stated in the point, as a fact, and to "be taken in connection with the question, "that worsted *is made out of wool by combing; "but that it becomes thereby a distinct article "well known in commerce under the denomi- "nation of worsted.*
>
> "Laws imposing duties on importations of "goods are intended for practical use and ap- "plication by men engaged in commerce; and "hence it has become a settled rule in the in- "terpretation of statutes of this description, "to construe the language adopted by the Leg- "islature, and particularly in the denomina- "tion of articles, according to the commer- "cial understanding of the terms used. This "rule is fully recognized and established by "this Court in the case of *The 200 Chests of "Tea*, reported in 9 Wheat., 438. The Court "there say the object of the duty laws is to "raise revenue, and for this purpose to class "substances according to the general usage "and known denominations of trade. Whether "a particular article was designated by one "name or another. in the country of its origin, "or whether it were a simple or mixed sub- "stance, was of no importance in the view of "the Legislature. It applied its attention to "the description of articles as they derived "their appellations in our own markets, in "our domestic as well as our foreign traffic; "and it would have been as dangerous as use- "less to attempt any other classification than "that derived from the actual business of "human life. It being admitted, in this case, "that worsted is a distinct article well known

> "in commerce under that denomination, we "must understand Congress as using the term "in that commercial sense, and as contra- "distinguished from wool, and woolen goods, "and other well known denomination of "goods."

And the Court held that the shawls and suspenders were not a manufacture of wool, or of which wool is a component part.

The case of *Elliott vs. Swartwout, 10 Peters, 137*, was approved and followed in

Seeberger vs. Cahn, 137 U. S., 95,

wherein the same restrictive meaning, so far as the tariff law was concerned, was given to the phrase "manufactures of wool."

In *United States vs. Reiss & Brady* (*C. C. A.*), *136 Fed. Rep., 741*, it was held that figs preserved in spirits or syrup, and with other fruits similarly preserved "known commercially as a class by themselves," were not dutiable as "figs." The Court, speaking through LACOMBE, J., said, at page 743:

> "We are further of opinion that the term "'figs' when used without qualifying descrip- "tive terms, in commercial significance means "the dried figs, commonly imported and sold "in baskets or boxes, which, like the other "dried fruits mentioned *eo nomine* in Para- "graph 264, plums, prunes, prunelles, raisins, "dates and currants—are not the preserved "fruits of Paragraph 263."

The same general principle is enunciated also by the Circuit Court of Appeals, First Circuit, in *Brennan vs. United States, 136 Fed. Rep., 743*, wherein it was held in effect that limes in brine, not being recognized in trade usage as limes,

should not be classified as limes under Paragraph 266, but were entitled to free entry rather as "fruits in brine, not specially provided for." The Court said, at page 745:

> "The record also shows by uncontradicted "evidence * * * that there has always "been in trade a distinction between limes "and limes in brine, to the extent that, if one "asked a merchant for limes, he would be "given fresh limes."

So in the case at bar, under similar reasoning, an article that is generally known, bought and sold in the trade in this country as "hair," or "mocha hair," for which provision is made in the free list, and which, according to the uncontradicted evidence, is not commercially recognized as wool, should not be classified under a provision covering wools of the third class, and camel's hair of the third class (*i. e.*, the hair of the Russian camel).

> *Hedden vs. Richard, 149 U. S., 346.*
> *Robertson vs. Salomon, 130 U. S., 412, 415.*

It is unnecessary to cite additional authorities that in the interpretation of tariff laws, commercial or trade usage and understanding are to be sought for as primary governing factors.

(B)

There is a clear distinction in the Tariff Law of 1897 between "wool" and "hair."

Paragraph 358 of the Tariff Act of July 24, 1897: reads as follows:

> "358. On wools of the third class and on "camels' hair of the third class the value

"whereof shall be twelve cents or less per "pound, the duty shall be four cents per "pound."

Hair of various kinds is separately provided for under Paragraphs 429, 430 and 571.

The repeated separate namings, and the various separate provisions in the Tariff Act of 1897 for "hair" and "wool" indicate that the framers of that law, at least in a tariff sense, considered that there was some difference or method of distinguishing between the two commodities, hair and wool.

Thus, by Paragraph 358 (the one under which the merchandise in controversy was classified) duty is imposed "on *wools* of the third class, *and* on *camel's hair* of the third class. It seems clear that the only kind of hair that Congress intended to provide for and make dutiable under Paragraph 358 was "*camels' hair of the third class.*" If they had intended the hair of any animals other than the Russian camel (such as the hair of the alpaca or of hair sheep), to be comprehended under this Paragraph 358, such intention undoubtedly would have been expressed by language similar to that used in Paragraph 350, where we find the following:

"350. Class two, that is to say, Leicester, "Cotswold, Lincolnshire, Down combing wools, "Canada long wools, or other like combing "wools of English blood, and usually known "by the terms herein used, and also *hair of "the camel, Angora goat, alpaca, and other "like animals.*"

It should be noted also that, while the various paragraphs of the wool schedule (K) differentiate wools and the hair of various animals, for dutiable purposes, Paragraph 360 specifies only "wools on

the skin," and makes no reference to hair of any kind. The logical inference from this seems to be that it was not the intention of Congress to impose duty upon *hair*, like this hair in question, when imported on the skin.

That Congress was warranted in distinguishing in the Act of 1807 between hair and wool is indicated by the evidence in this case, which clearly shows what constitute the differences according to trade understanding and practice between this mocha hair and wool (fols. 88, 103-104, 113-115, 126-127, 137-141, 188, 198-202).

The testimony of Souls (fol. 88), Klauder (fols. 103-104), Parkhurst (fols. 113-115), Simon (fols. 126-127). Weiler (fol. 188), Ritchie (fols. 198-202), and Government Examiner Kitching (fols. 137-141), all tends to support the proposition that the mocha hair or covering on the skins in question has not the wool fiber at all—that it is coarse, stubby, bristle like, having neither the "appearance" or "feel" of wool, which is "soft, pliable, curly"—that wool fiber can be pulled apart, and has a diffierent feeling and action entirely, also can be spun alone, while hair cannot; that wool has a curly fiber and the filaments will adhere to each other, whereas this mocha hair "separates as you shake it out and does not adhere, each fiber being separate"; that this mocha hair is kemp or dead hair—isn't commercially suitable for carding, though you "might work it with wool"—and that it "can only be used for stuffing and such purposes."

All of the testimony above summarized was introduced without objection, and is uncontradicted.

(C)

With respect to the value and use of the hair in controversy, the case at bar is quite similar to the case of

Keen Sutterlee & Co. vs. United States, Suit No. 2163,

quoted in T. D. 22831, G. A. 4872, decided by TOWNSEND, J., in the Circuit Court, for the Southern District of New York, wherein the question was as to the proper classification of the growth or "covering on skins taken from goats which are a cross between Cape of Good Hope and Persian or Turkish Angora goats, commercially known as Cape Bastard skins." In the Keen Sutterlee Co. case the Circuit Court said:

> "It (the growth on such Cape Bastard "skins) was neither wool nor hair of the char- "acter of the hair of the Angora goat, but was "a coarser hair, not suitable for spinning or "for any of the purposes for which wool or "Angora goat hair is used. The evidence "shows that the hair in this case in only used "for mixing with mortar, and is comparatively valueless";

and the Court accordingly held that said Cape Bastard skins imported with the hair thereon were entitled to free entry as skins, under Paragraph 605 of the Tariff Act of 1890. Almost the same statement as that above quoted, may be made concerning the growth or covering on the whitehead hair sheepskins here in question.

(D)

Congress never intended to impose a duty of over 100 per cent. on this commercially worthless material.

The evidence is is uncontradicted that the price of these sheepskins is not regulated or influenced at all by the quantity of hair on the skin, and that the hair is objectionable, and the more hair there is, the less money the merchandise will bring per pound (fols. 71-72); that the skins are bought solely for the pelt to manufacture leather out of the pelt, and that short haired skins are preferable (fol. 109); that in buying, no notice is taken of the growth, only the value of the pelt being considered (fol. 187).

The skins are sold to and used by tanners of glove leather and shoe leather (fols. 73, 112,113); and the tanners, after removing and washing the hair, sell it for stuffing purposes—for making sweat pads for horses, stuffing mattresses, etc. (fols. 92-93, 116-117, 121-122).

The evidence is uncontradicted that the covering on these skins, even after it is washed and taken off the skin, sells at wholesale for only from three to five cents per pound (fol. 109); that the hair is never long enough to be worth anything to tanners (fol. 186), and that the cost of removing the hair from the skins amounts to more than the hair sells for (fols. 185, 110).

Mr. Klauder, a tanner, testified as follows:

> "Q. What is the value of the labor that "you put upon this hair of the mocha sheep-"skin per pound?
>
> "A. The labor is in excess for what we get "for the hair, the labor in taking the hair off "the skin, and washing it, and drying it, does "not pay for the labor to take it off and "handle it—the price we get for the hair does "not pay for the labor" (fol. 110).

Mr. Ritchie testified that he "valued (the hair) washed and cleaned at four and one-half to five

cents a pound—that this would be the value of the hair removed from the skin and washed clean" (fols. 196-198).

Figuring even on the basis of what the hair sells for per pound, washed and cleaned after it is removed from the pelt—three to five cents—the imposed duty of three cents per pound is equivalent to nearly one hundred per cent. *ad valorem*. That, however, the duty of three cents per pound is greatly in excess of one hundred per cent. *ad valorem*, is shown by the fact that the cost of removing the hair from the pelts is more than the selling price of the hair.

Common goat hair, including mocha goat hair, is admitted free of duty (T. D. 18699 and T. D. 21739, G. A. 4595); yet according to the uncontradicted evidence in the case at bar, common goat hair is more valuable than the hair here under consideration (fol. 198), and it would seem to be inequitable, if not unlawful, to impose duty on the latter while admitting the former free.

It is not to be presumed that Congress intended to levy such an exorbitant duty upon commercially worthless material.

(E)

With due deference, it is submitted that the Circuit Court erred in holding that there was sufficient evidence before the Board to support the conclusion reached, and that such conclusion is also supported by the definitions in the encyclopedias and dictionaries.

The only iota of testimony in this entire record of eighty-two printed pages, which could in any way be construed as tending to support the Government's claim that the substance on these skins

is wool, is furnished by Government Examiner Kitching, pages 45 to 47, but *even he* tacitly admitted that the growth was not wool, when he testified both at folios 137 to 138 and at folio 141, that it was not commercially suitable for carding, but that "they can mix it *with wool* and card it." And he swore further on direct-examination (fol. 137) that the substance was more in the nature of hair than wool, and that if it were on a goat, he would pass it free as hair (fol. 136).

But even taking the testimony of Mr. Kitching in a light most favorable to the Government, and assuming for the purposes of this argument that it was as a wdole to the effect that the growth on Exhibit I was more in the nature of *wool* than in the nature of hair, it is still to be taken into consideration that we have as opposed to that, the *uncontrocerted* and *uncontradicted* evidence of eight other witnesses, including Mr. E. S. Parkhurst and Mr. George B. Ritchie, that the growth on Exhibit I is *not* wool, but "mocha hair," and that it would not constitute a good delivery under an order even for low grade wool.

Further, it may be noted that several *additional* witnesses, who did not testify before the Board of General Appraisers, were called on behalf of the importers for the Referee in the Circuit Court, and their evidence tended to show the manifest error of the Board's conclusion; we, therefore, respectfully urge that upon the entire record as it now stands, the only logical conclusion which can be arrived at is that the Collector erred in not classifying this merchandise under Paragraph 664 or 571 of the free list rather than under Paragraph 358 of the dutiable list.

Independent of commercial usuage, and of the fact that in trade, "mocha hair" has always been

deemed a separate and distinct commodity from wool of lower value, and used for entirely different purposes, and considered simply from the standpoint of common knowledge, it is evident from mere inspection, that the substance on Exhibit I, which is the subject of this appeal, is *not wool.*

In the Encyclopedia Brittanica (9th Ed., Vol. 24, p. 653), under the title of "Wool and Woolen Manufactures" it is said:

> "Wool is a modified form of hair, distinguished by its slender, soft and wavy or curly "structure, and by the highly imbricated or "serrated surface of its filaments."

And in the Century Dictionary, the following appears, in a sub-heading, under "wool";

> "Its (wool's) special distinction from hair, "depends in part upon the *kinks in the shaft* "*or fiber, but mainly upon the scales with* "*with which the surface is imbricated.*"

We respectfully submit that it may be fairly stated that none of the above named characteristics of wool are present or observable in the material here in question. The substance on Exhibit 1 (which, after being removed, from the skins, is used for stuffing purposes, for horse collars, etc.), plainly has nothing about it of a slender, soft and wavy nature; it has no kinky or curly structure, and the surface of its filaments is not highly imbricated or serrated.

We, therefore, conclude that according to the usual and common understanding of the terms, as well as under trade usage, this substance is hair, rather than wool, and that it should not be classified for duty under Paragraph 358 of the Tariff Act of 1897, which provides for *wools* of the third class, and *camels'* hair of the third class.

II.

The cases of Lyon vs. Marine, 55 Fed. Rep., 964, and T. D., 21,737, G. A. 4,593 are distinguishable from the case at bar, involving different issues.

The issue in the case of *Lyon vs. Marine, 55 Fed. Rep., 964*, cited by the Board of General Appraisers as authority for overruling these protests, was quite different from that involved in the case at bar.

In the Lyon case the question was whether certain fleeces of North China unimproved sheep, *composed of both wool and hair* and valued at nine cents a pound should be assessed for duty at eleven cents per pound (a rate equivalent to 133% *ad valorem*), under the provision of Paragraph 377 of the Tariff Act of 1890, covering:

> "hair of the camel, goat, alpaca, and other "like animals,"

or should be assessed for duty at 32 per cent. *ad valorem* under Paragraph 378 of that Act, as "wools of Class Three," the Court saying:

> "In the third class are placed the coarse "fleeces of the unimproved sheep of certain "South American States, Smyrna and Russian "camel's hair, and such coarse wools as have "been usually imported from Turkey, Greece, "Egypt, Syria, and elsewhere excepting im- "proved wools" (p. 965).

The Court upheld the importer's contention that a sheep, in respect to its fleece, was not a "like animal" to a goat, and decided that Para-

graph 378, rather than Paragraph 377, should govern.

From the decision in the Lyon case it may be observed, however, that no question was raised or claim made, as in the case at bar, that there was no wool in fact, or according to commercial understanding about the fleeces in controversy, and that the merchandise was entitled to free entry as "skins" or "hair."

According to the undisputed evidence, the question involved in G. A. 4593 was as to the proper classification of Jeddah sheepskins (represented by Illustrative Exhibit A), which come from a mountainous district of Arabia, and on which the growth of hair is much longer than on the mocha whitehead sheepskins in controversy (represented by Exhibit I), which come from Hodeida. This difference was clearly pointed out by the evidence, taken before the Referee in this case (fols. 178 to 183). Mr. Ritchie testified that both the growths on Exhibit I and Illustrative Exhibit A would be commercially known as hair, but that the growth on Exhibit A was "considerably better stuff," and would probably bring about ten to ten and a half cents a pound (fol. 202), while the growth on Exhibit I, although valueless in its imported condition, would, after it had been removed from the skin and washed and cleaned, be valued at four and a half to five cents a pound (fol. 196).

Mr. Weiler testified, and his testimony is uncontroverted, that the growth on the Jeddah sheep is longer and might be used for the purposes for which wool is used; while the growth on a Hodeida sheep is short and cannot be used for any purpose where wool is used, and that he would never think of protesting on Jeddah sheepskins (fols. 181-182).

III.

The fact that for many years prior to 1899 it had been the uniform practice of the Customs officials to admit merchandise like this in controversy free of duty, should have an important bearing upon the questions here involved.

From a published decision of the Treasury Department, rendered June 30, 1879, known as T. D. 4069, it appears that the Assistant Secretary of the Treasury then sanctioned the classification of so-called hair sheepskins (consisting of the pelts of sheep recently sheared), under the provision of the free list of the Tariff Act of June 6, 1872, enumerating,

> "Hides, raw or uncured, whether dry, "salted, or pickled, and skins except sheep-"skins with the wool on,"

basing his decision on the ground that the growth of wool or hair on the skins was of insufficient value to warrant its classification as wool.

Whether or not the practice of the Custom officials of returning mocha hair sheepskins free as rawskins began as early as 1879, we do not know, as we find no early decisions about the classification of mocha hair sheepskins; but T. D. 4069 seems to indicate that they may have been permitted free entry as early as 1879.

There is, indeed, positive evidence in this case, furnished by the testimony of Mr. Kitching, Government examiner, that skins like Exhibit I were formerly returned by him free, the hair as well as

the skin; that that was true when he first came, fifteen years prior to 1904—that is about 1889; but he could not say up to just what time that practice prevailed (fols. 134 to 135).

This is supplemented by the testimony of Mr. Helmrath to the effect that for many years prior to 1899 no duty was charged on merchandise like that in controversy, and that the Government practice in this respect changed in or about the year 1899, the evidence on this point being as follows:

> "Q. Is it or is it not true that for many "years prior to 1899 no duty was levied on "hair of whitehead sheepskins like Exhibit I?
> "A. That is the fact.
> "Q. So the Government practice has changed in or about 1899?
> "A. Yes, sir" (fol. 74).

See also folio 49, to the effect that the Goat & Sheepskin Import Company imported these skins for 15 years prior to March 3, 1903, and that they had *never been assessed for duty* as wool until the arrival of the lot per Manitou, November 18, 1899.

It, therefore, may be fairly assumed that under the latter years of the Tariff Act of 1883, and during all the time that the McKinley Act of October 1, 1890, and the time that the Wilson Tariff Law of August 28, 1894, and during the first three years that the Dingley Act of July 24, 1897, was operative, mocha whitehead hair sheepskins were allowed free entry.

During all that period of time from 1889 up to 1899 (save under the Tariff Act of 1894 when wool was on the free list), there had been continuously in force under the various Tariff Acts of 1883, 1890 and 1897, a specific provision for "wools of

the third class," corresponding to the provision under which duty was levied in the case at bar; and yet during all that time mocha whitehead sheepskins were classified free of duty as "skins, not otherwise provided for," and the growth on such skins was never assessed as "wool."

Where the language of the Tariff Acts has been substantially the same in respect to certain goods, the construction uniformly applied by the Treasury Department for many years will not be disregarded, except for very cogent reasons.

Merritt vs. Cameron, 137 U. S., 542, 552.
Robertson vs. Downing, 127 U. S., 607, 613.

Wherefore, your petitioner prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals, for the Second Circuit, commanding the said Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein, entitled The Goat & Sheepskin Import Company, appellant, against The United States, appellee, to the end that the said case may be reviewed and determined by this Court as provided in Section 6 of the Act of Congress, entitled "An Act to Establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3d, 1891, and that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem just and in conformity with the said Act, and that the said judgment of the said Circuit Court of Appeals in the said case,

and every part thereof, may be reversed by this Honorable Court.

And your petitioner will ever pray.

Dated April 9th, 1906.

EDWARD S. HATCH,

J. STUART TOMPKINS,
Counsel for Petitioner.

Southern District of New York, }
State and County of New York, } ss.:

J. Stuart Tompkins, being duly sworn, says that he is counsel for the petitioner above named; that he prepared the foregoing petition, and that the allegations thereof are true as he verily believes.

J. STUART TOMPKINS.

Subscribed and sworn to before me, this 9th day of April, 1906,

Henry J. Rodes,
(NOTARIAL SEAL.) Notary Public,
Kings County,
Certificate filed in New York County.

To
William H. Moody, Esq.,
Attorney General of the United States,
Washington, D. C.

Please take notice that on the 23d day of April, 1906, on the opening of the Court, or as soon thereafter as the matter can be heard, we shall move the Supreme Court of the United States, at the court room thereof, in the City of Washing-

ton, D. C., that the foregoing petition for a writ of certiorari be granted.

Dated New York, April 9th, 1906.

EDWARD S. HATCH,

J. STUART TOMPKINS,
Counsel for Petitioner.

Service of above notice and receipt of a copy thereof, together with copy of the petition, are hereby admitted at Washington, D. C., this 12 day of April, 1906.

[9318]

Henry M Hoyt
Solicitor General
H.